



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**DEC 07 2012**

Al Cardenas, Chairman  
American Conservative Union  
1007 Cameron Street  
Alexandria, VA 22314

RE: MUR 5758 (Pierce O'Donnell)  
(formerly part of MUR 5366)

Dear Mr. Cardenas:

This is in reference to the complaint filed by the American Conservative Union with the Federal Election Commission on May 30, 2003, concerning various contributors to Edwards for President, which was originally designated MUR 5366. On June 21, 2006, the American Conservative Union was notified of the Commission's actions in this matter and that this matter was closed on June 5, 2006. Related documents were placed on the public record.

On June 5, 2006, the Commission severed respondents Pierce O'Donnell and O'Donnell Shaeffer Mortimer LLP from MUR 5366 and opened a new matter for them, which was designated MUR 5758. After conducting an investigation in MUR 5758, the Commission, on February 21, 2007, found that there was probable cause to believe Pierce O'Donnell knowingly and willfully violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, and referred him to the Department of Justice pursuant to 2 U.S.C. § 437g(a)(5)(C). Also on this date, the Commission found probable cause to believe that Dolores Valdez violated 2 U.S.C. § 441f and decided to take no further action other than admonishment and close the file with respect to her; decided to take no action against O'Donnell & Mortimer LLP f/k/a O'Donnell & Shaeffer LLP and closed the file as to them; and took no further action other than admonishment and close the file with respect to Christina Andujo, Hilda Escobar, Jacqueline Folsom, Russell Folsom, Anita Latinovic; Else Latinovic, Mary O'Donnell, Meghan O'Donnell, Elizabeth Owen, Bert Rodriguez, Johnny Rodriguez, Rafael Velasco, Gerald Wahl, Helen Wahl, and Harry Silberman.

On December 5, 2012, a conciliation agreement signed by Pierce O'Donnell was accepted by the Commission. Accordingly, the Commission closed the file in MUR 5758 on December 5, 2012.

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Al Cardenas, Chairman  
American Conservative Union  
MUR 5758 (Pierce O'Donnell)  
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Documents related to MUR 5758 will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the agreement with Pierce O'Donnell, and the relevant dispositive General Counsel's Report, is enclosed for your information.

Sincerely,



Mark D. Shonkwiler  
Assistant General Counsel

Enclosures  
Conciliation Agreement  
General Counsel's Report #1, dated February 15, 2007

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Pierce O'Donnell

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)  
)

MUR 5758

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint. An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that Pierce O'Donnell ("Respondent") knowingly and willfully violated 2 U.S.C. § 441f.

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

**Background**

1. Pierce O'Donnell is a United States citizen residing in Los Angeles, California. O'Donnell is the founding partner and Chairman of the law firm O'Donnell & Mortimer LLP f/k/a O'Donnell Shaeffer Mortimer LLP in Los Angeles, California.<sup>1</sup>
2. Dolores Valdez, Else Latinovic, Hilda Escobar, Bert Rodriguez, Harry Silberman, and Elizabeth Owen are or were non-lawyer employees of O'Donnell & Mortimer

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LLP at the time of the events in this matter. Dolores Valdez was O'Donnell's secretary and personal assistant. Else Latinovic was an office administrator. Hilda Escobar was a secretary. Bert Rodriguez was a facility manager. Harry Silberman was a paralegal. Elizabeth Owen was a secretary.

3. Mary O'Donnell, Meghan O'Donnell, Helen Wahl, and Gerald Wahl are relatives of Pierce O'Donnell.

4. Anita Latinovic, Jacqueline Folsom, Russell Folsom, Raphael Valasco, Johnny Rodriguez, Christina Andujo, and Mayela Saucedo are relatives or friends of the O'Donnell & Mortimer LLP employees referenced in Paragraph IV.2.

5. Senator John Edwards was a candidate for President of the United States in the Democratic primaries for the 2004 election.

6. Edwards for President and Julius Chambers in his official capacity as treasurer (the "Edwards Committee") was Senator John Edwards's authorized committee, as set forth in 2 U.S.C. § 431(6).

Law

7. 2 U.S.C. § 441f prohibits: (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. § 441f; 11 C.F.R.

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<sup>1</sup> In mid-2006, O'Donnell & Mortimer LLP and its assets were acquired by a large national law firm. Pierce O'Donnell left with an assistant and a paralegal to establish O'Donnell & Associates PC, which presently employs an assistant and a second year associate.

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§ 110.4(b)(1)(iii). This prohibition also applies to any person who provides the money to others to effect contributions in their names. 11 C.F.R. § 110.4(b)(2).

**Facts**

8. Pierce O'Donnell agreed to host a fundraising breakfast for Senator John Edwards's presidential campaign. Using law firm stationery, O'Donnell sent invitations to approximately 50 individuals. The fundraiser took place on March 1, 2003 at the Peninsula Hotel in Los Angeles, California. O'Donnell recalls making a commitment to raise \$50,000 by March 31, 2003, for the Edwards Committee. After O'Donnell agreed to raise funds, the Edwards Committee sent him a package which contained donor cards and legal compliance information, including a written warning that the law prohibited reimbursed contributions.

9. O'Donnell knew that the law placed limits on the amount of individual contributions to federal candidates and knew that the law prohibited reimbursing federal campaign contributions. Pierce O'Donnell had prior experience raising funds for federal candidates. O'Donnell himself was previously a candidate for the House of Representatives, and he also served on the national finance committee of Bill Clinton's 1992 and 1996 presidential campaigns.

10. In mid-March 2003, O'Donnell asked Dolores Valdez, his secretary and personal assistant, to approach both attorneys and non-lawyer employees at O'Donnell & Mortimer to solicit contributions to the Edwards Committee. At O'Donnell's instruction, Valdez told the non-lawyer employees that O'Donnell would reimburse them and anyone they recruited for their contributions. Attorneys at the law firm were not offered reimbursement. This followed a similar pattern to a previous reimbursement scheme in 2000. In 2000, O'Donnell had also held

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a fundraiser for a Los Angeles mayoral candidate, James Hahn, at the law firm, and he subsequently reimbursed contributions to the Hahn campaign in a similar fashion to the reimbursements at issue in this matter. O'Donnell pleaded no contest to five counts of using a false name to make campaign contributions to settle criminal charges in Los Angeles related to the Hahn reimbursements. O'Donnell settled civil charges with the Los Angeles City Ethics Commission and the California Fair Political Practices Commission related to the Hahn reimbursements, and was penalized with a fine and probation.

11. Dolores Valdez approached five non-lawyer employees of the firm that agreed to make, and/or recruit others to make, reimbursed contributions to the Edwards Committee. The non-lawyer employees were Else Latinovic, Hilda Escobar, Bert Rodriguez, Harry Silberman, and Elizabeth Owen. Valdez did not make a contribution in her own name.

(a) In addition to her own \$2,000 contribution, Else Latinovic solicited her mother, Anita Latinovic, and family friends, Jacqueline Folsom and Russell Folsom to make \$2,000 contributions to the Edwards Committee. O'Donnell gave Else Latinovic an \$8,000 check to reimburse the contributions made by her, Anita Latinovic, Jacqueline Folsom, and Russell Folsom.

(b) In addition to her own \$2,000 contribution, Hilda Escobar solicited her father, Raphael Valasco, to contribute \$2,000 to the Edwards Committee. O'Donnell gave Hilda Escobar a \$4,000 check to reimburse the contributions made by her and Raphael Valasco.

(c) In addition to his own \$2,000 contribution, Bert Rodriguez solicited his son, Johnny Rodriguez, and his son's girlfriend, Christina Andujo, to each contribute \$2,000 to the Edwards Committee. O'Donnell gave Bert Rodriguez a \$4,000 check to reimburse the

contributions made by Johnny Rodriguez and Christina Andujo. Dolores Valdez reimbursed Bert Rodriguez for his contribution out of a check O'Donnell gave to Ms. Valdez.

(d) O'Donnell gave Harry Silberman and Elizabeth Owen each \$2,000 checks to reimburse their contributions.

(e) Dolores Valdez solicited her sister, Maria Saucedo, to contribute \$2,000 to the Edwards Committee. O'Donnell gave Valdez a \$4,000 check to reimburse her sister's contribution as well as Bert Rodriguez's contribution.

12. In addition to soliciting and reimbursing non-lawyer employees of his law firm through Ms. Valdez, O'Donnell directly asked family members to contribute \$2,000 to the Edwards Committee that he would reimburse. Mary O'Donnell, Meghan O'Donnell, Helen Wahl, and Gerald Wahl are all members of O'Donnell's family that made contributions in the amount of \$2,000 each to the Edwards Committee and were reimbursed by Pierce O'Donnell.

13. O'Donnell himself contributed \$2,000 to the Edwards Committee.

14. O'Donnell and 34 other individuals associated with him contributed approximately \$50,000 to the Edwards Committee. O'Donnell reimbursed 16 of these individuals for contributions totaling \$32,000, though two of these contributions (totaling \$4,000) were apparently not received by the Edwards Committee.

15. In 2008, O'Donnell was indicted for three felony violations of federal campaign law. After a jury trial and lengthy appellate process, in August 2011, O'Donnell entered a guilty plea to two misdemeanor violations of federal campaign laws and was sentenced to two months in federal prison and four months in a halfway house.

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16. O'Donnell's license to practice law in California was suspended for several months while he served out his sentence for these criminal convictions, and remains suspended at this time. Respondent contends that his criminal indictment, convictions and the suspension of his California law license have negatively impacted his law practice, which is his sole source of income. Respondent also contends that he has been diagnosed with medical conditions that make it difficult to work, and that his law firm is not presently generating any income.

17. In June 2011, O'Donnell separated from his wife of 16 years and began divorce and child custody proceedings that he contends were contentious and costly.

18. Respondent contends that he has accumulated substantial legal and other debts related to his criminal and divorce proceedings that remain outstanding, and he has provided documentation to support his claims about his financial circumstances.

19. Under penalty of perjury, Respondent declares that the contributions enumerated herein are the only federal contributions that he reimbursed or attempted to reimburse, and that the information contained in this Agreement regarding those contributions and describing his current financial circumstances is complete and accurate.

V. Respondent knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the names of others.

VI. In ordinary circumstances, the Commission would seek a civil penalty based on the violations outlined in this agreement as well as mitigating circumstances. However, based upon representations made by O'Donnell, including the submission of a sworn affidavit and financial documentation detailing the dissolution of his assets, the Commission is taking into

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account the fact that O'Donnell has considerable outstanding debts, no current income and no reasonable expectation of income that would enable him to pay a civil penalty in the foreseeable future. The Commission regards these submissions and representations as material representations. Due to the mitigating circumstances presented by O'Donnell's financial condition, the Commission agrees that no civil penalty will be due. If evidence is uncovered indicating O'Donnell's financial circumstances are not as stated in his affidavit and documentation, a total civil penalty of two hundred and seventy-two thousand dollars (\$272,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

VII. Respondent will cease and desist from violating 2 U.S.C. § 441f.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

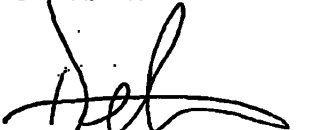
XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

12-7-12  
Date

Anthony Herman  
General Counsel

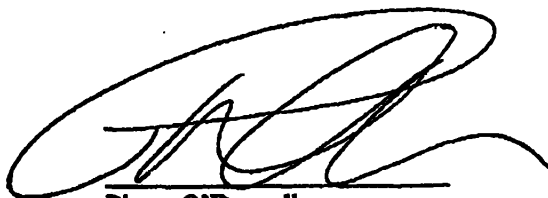
BY:



Daniel A. Petalas  
Associate General Counsel for Enforcement

FOR THE RESPONDENT:

11-19-12  
Date



Pierce O'Donnell

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Pierce O'Donnell

O'Donnell & Mortimer LLP  
f/k/a O'Donnell & Shaeffer LLP

Dolores Valdez

Other Conduit Respondents: Christina Andujo, Hilda Escobar, Jacqueline Folsom, Russell Folsom, Anita Latinovic, Elsie Latinovic, Mary O'Donnell, Meghan O'Donnell, Elizabeth Owen, Bert Rodriguez, Johnny Rodriguez, Rafael Velasco, Gerald Wahl, Helen Wahl, and Harry Silberman.

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**SENSITIVE**

MUR 5758

**GENERAL COUNSEL'S REPORT #1<sup>1</sup>**

**I. ACTIONS RECOMMENDED**

(1) Find probable cause to believe that Pierce O'Donnell knowingly and willfully violated 2 U.S.C. § 441f; (2) find probable cause to believe that O'Donnell & Mortimer LLP f/k/a O'Donnell & Shaeffer LLP ("the Firm") violated 2 U.S.C. § 441f and (3) find probable cause to believe that Dolores Valdez violated 2 U.S.C. § 441f, but take no further action other than to issue a letter of admonishment and close the file; and (4) take no further action other than to issue letters of admonishment and close the file as to the fifteen remaining conduit respondents.

<sup>1</sup> This matter was generated by the Commission severing allegations as to these Respondents from a matter previously designated as MUR 5366. Although this is the first report submitted under MUR 5758, this fact pattern was discussed in MUR 5366 General Counsel's Reports #1, #3, and #5.

**II. INTRODUCTION**

The Commission previously found reason to believe that the Firm knowingly and willfully violated 2 U.S.C. § 441f, that Pierce O'Donnell violated 2 U.S.C. § 441f, and that various other Respondents, including Dolores Valdez, violated 2 U.S.C. § 441f. The basis for these findings was information that the Firm may have reimbursed some of its employees for contributions to John Edwards's 2004 presidential campaign. See Factual and Legal Analysis in MUR 5366.

The results of the ensuing investigation are fully set forth in the General Counsel's Briefs issued to Pierce O'Donnell, O'Donnell & Mortimer, LLP, and Dolores Valdez (referred to hereinafter as "O'Donnell Brief," "Firm Brief," and "Valdez Brief"), which are incorporated by reference. In sum, Pierce O'Donnell (who asserted his Fifth Amendment right rather than provide testimony in this matter) used his personal funds to reimburse sixteen individuals (including employees of the Firm) for \$32,000 in contributions to Edwards for President ("the Edwards Committee"), and he was assisted in this scheme by his legal secretary, Dolores Valdez (who also asserted her Fifth Amendment right).<sup>2</sup>

Pierce O'Donnell, the Firm, and Dolores Valdez do not dispute the basic facts as to the reimbursement of contributions set forth in the General Counsel's Briefs. See O'Donnell Response Brief filed on Dec. 11, 2006; Supplemental O'Donnell Response Brief filed on Jan. 3, 2007; Firm Response Brief filed on Dec. 14, 2006; and Valdez Response Brief filed on Dec. 5, 2006. The O'Donnell Response is limited to arguing that Pierce O'Donnell had a mental

<sup>2</sup> For unknown reasons, only \$18,000 of these contributions were received and deposited by the Edwards Committee. The Edwards Committee, which appears to have had no knowledge of the reimbursements and which promptly refunded all contributions solicited by O'Donnell upon learning of the allegations, is not a respondent in this matter.

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1 condition that caused him to lack the capacity to act in a knowing and willful manner. The Firm  
2 Response is limited to arguing that the Firm is not vicariously liable for O'Donnell's alleged  
3 violations of law in connection with this matter. The Valdez Response is limited to arguing that  
4 Valdez was a subordinate employee who simply followed O'Donnell's instructions in organizing  
5 the reimbursement scheme, and asks the Commission to exercise its discretion by taking no  
6 further action.

7 Based on our consideration of the responses, we are recommending that the Commission  
8 find probable cause to believe that specific Respondents violated the Act. We recommend that the  
9 Commission find probable cause to believe that Pierce O'Donnell knowingly and willfully  
10 violated 2 U.S.C. § 441f,

11  
12 We also recommend that the Commission find probable cause to believe that  
13 the Firm violated 2 U.S.C. § 441f (but exercise its prosecutorial discretion to make this finding  
14 without a knowing and willful component) and. We  
15 further recommend that the Commission find probable cause to believe that Dolores Valdez  
16 violated 2 U.S.C. § 441f, but take no further action other than to issue a letter of admonishment.  
17 Finally, we recommend that the Commission take no further action other than to issue letters of  
18 admonishment to various individuals who served as conduits for reimbursed contributions to the  
19 Edwards Committee.

20 **III. FACTUAL SUMMARY**

21 Pierce O'Donnell, a name partner in the Firm, reimbursed \$32,000 in contributions to the  
22 Edwards Committee in March of 2003. These contributions and reimbursements were connected  
23 to a March 1, 2003 fundraising breakfast O'Donnell had hosted for Edwards that was attended by

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1 some attorneys of the Firm as well as other individuals. Although O'Donnell used the Firm's  
2 resources, including its personnel, supplies and letterhead to organize the breakfast fundraiser, he  
3 made the reimbursements using his personal funds.

4 When O'Donnell failed to meet his fundraising goal through the fundraiser, he asked  
5 Dolores Valdez, his legal secretary, to find employees of the Firm who would contribute in  
6 return for reimbursement of their contribution. As discussed in the General Counsel's Briefs,  
7 Valdez had previously made similar arrangements for O'Donnell following a fundraiser held by  
8 the Firm for local mayoral candidate James Hahn.<sup>3</sup> In response to O'Donnell's request for  
9 contributions to the Edwards Committee, Ms. Valdez asked various non-lawyer employees of the  
10 Firm to make contributions, which O'Donnell would reimburse, and also asked some of those  
11 employees to solicit their friends and family members to make contributions, which also would  
12 be reimbursed by O'Donnell.<sup>4</sup> See Flow Chart of Reimbursements attached to General  
13 Counsel's Briefs at Attachment 1.

14 O'Donnell, who was an experienced political fundraiser and former congressional  
15 candidate, was fully aware that it was illegal to reimburse contributions and even signed a donor  
16 card provided by the Edwards Committee noting the prohibition on contributions made in the  
17 name of another. O'Donnell's Response does not dispute his knowledge that it was illegal to  
18 reimburse the contributions. O'Donnell Response at 7; O'Donnell Response Exh. 1 at 4.  
19 O'Donnell, however, has submitted medical evidence indicating that he was, and is, suffering

<sup>3</sup> As noted in the General Counsel's Brief, O'Donnell recently settled both criminal and civil charges in Los Angeles relating to the reimbursement of the Hahn contributions by pleading no contest to multiple counts of using a false name to make campaign contributions. See GC Brief at pp. 8-9 and fn 7.

<sup>4</sup> As noted in the General Counsel's Brief, the lawyers at the Firm who agreed to contribute to the Edwards Committee appear to have done so without any promise of reimbursement.

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1 from Bipolar Disorder, which impaired his judgment and purportedly diminished his capacity to  
2 have "willfully" violated the Act.

3 The Firm has submitted evidence that no partner in the Firm other than O'Donnell was  
4 aware of the reimbursements and has argued that it is not vicariously liable for violations by  
5 O'Donnell that it contends did not occur as part of the Firm's ordinary course of business.

6 **IV. LEGAL ANALYSIS**

7 **A. Pierce O'Donnell**

8 The Act prohibits any person from making a contribution in the name of another.  
9 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(2). O'Donnell made \$32,000 in contributions in the  
10 names of sixteen other individuals. See O'Donnell Brief at 9-13. That is not disputed by the  
11 respondent. Although the evidence discussed in the General Counsel's Briefs and below shows  
12 that the violation is knowing and willful, O'Donnell argues that he lacked the capacity to commit  
13 a "knowing and willful" violation of the law due to a previously undiagnosed mental illness.

14 The phrase "knowing and willful" indicates that "acts were committed with a knowledge  
15 of all the relevant facts and a recognition that the action is prohibited by law...." H.R. Rpt. 94-  
16 917 at 3-4 (Mar. 17, 1976) (*reprinted in Legislative History of Federal Election Campaign Act*  
17 *Amendments of 1976* at 803-4 (Aug. 1977)); see also *National Right to Work Comm. v. FEC*,  
18 716 F.2d 1401, 1403 (D.C. Cir. 1983) (citing *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101, 102 (D.C.  
19 Cir. 1980) for the proposition that "knowing and willful" means "'defiance' or 'knowing,  
20 conscious, and deliberate flaunting' [sic] of the Act" as opposed to "a breach of law by mistake,  
21 not by willful wrong"); *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). The  
22 *Hopkins* court also held that taking steps to disguise the source of funds used in illegal activities  
23 might reasonably be explained as the result of a "motivation to evade lawful obligations." (*citing*

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1 *Ingram v. United States*, 360 U.S. 672, 679 (1959)) (internal quotations omitted). A Section  
2 441f violation, in which the true source of the funds used to make a contribution is withheld from  
3 the recipient committee, is inherently self-concealing.

4 As noted in the General Counsel's Briefs, there are multiple reasons to conclude that  
5 O'Donnell knowingly and willfully violated the Act.<sup>5</sup> See O'Donnell brief at 10-11. First,  
6 O'Donnell's decades of prior experience with political fundraising demonstrates his knowledge  
7 of the law. From running for Congress to seeking an advisory opinion from the Commission to  
8 serving on the national finance committee of a presidential campaign, O'Donnell is a  
9 sophisticated political actor. Second, the Edwards Committee sent O'Donnell an informational  
10 packet that recited the prohibition on making contributions in the name of another. Third,  
11 O'Donnell signed a donor card provided by the Edwards Committee that explicitly stated that  
12 contributions cannot be reimbursed. Fourth, O'Donnell developed an elaborate scheme to  
13 disguise the source of his contributions by using multiple levels of conduits, which disguised the  
14 true source of the contributions. Finally, the use of the word "bonus" on the memo lines of  
15 reimbursement checks to Firm employees suggests an intent to hide the true purpose of the  
16 checks.<sup>6</sup> These circumstances establish a clear basis for the Commission to find probable cause  
17 to believe that O'Donnell's violation of the Act was knowing and willful.

<sup>5</sup> The Commission also may draw an adverse inference from O'Donnell's refusal to testify in this matter. See *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *S&C's. Genstar-TV Guide Int'l, Inc.*, 401 F.3d 1031, 1046 (9th Cir. 2005) ("[p]arties are free to invoke the Fifth Amendment in civil cases, but the court is equally free to draw adverse inferences from their failure of proof") quoting *SEC v. Colella*, 139 F.3d 674, 677 (9th Cir. 1998).

<sup>6</sup> In its one comment on a fact other than O'Donnell's mental state, the O'Donnell Response states that that "there is no evidence before the Commission that O'Donnell personally prepared the checks or included the typed 'bonus' notation on certain of the checks." (O'Donnell Response at 3, fn 3). Notwithstanding this qualification, the O'Donnell Response apparently does not contest that Pierce O'Donnell both authorized and signed checks for contribution reimbursements containing the "bonus" notation.

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1 In arguing the violations were not knowing and willful, O'Donnell's response relies on  
2 the letters from four mental health professionals who examined O'Donnell, for varying lengths  
3 of time in recent months, and diagnosed him as having either Bipolar I or II Disorder.<sup>7</sup>  
4 See O'Donnell Response, Exhs. 1-5. According to the Response, in spite of O'Donnell's  
5 "intellectual and professional capabilities and achievements," his mental illness "significantly  
6 impaired ... his judgment and capacity to form the requisite intent" that the O'Donnell Response  
7 argues is required to satisfy the knowing and willful standard.<sup>8</sup> See O'Donnell Response at 3.  
8 Pursuant to a request set forth in the Response, we met with Dr. Mark Mills to further discuss his  
9 diagnosis of Mr. O'Donnell. In that meeting, Dr. Mills acknowledged that O'Donnell knew that  
10 his conduct was illegal and had attempted to conceal it, but opined that both the knowing and  
11 willful elements of his conduct were significantly "blurred" by his purported mental impairment.  
12 Int. with Dr. Mark Mills, Dec. 19, 2006. Dr. Mills stated that at the time of the Edwards  
13 contributions, O'Donnell was likely in a hypomanic state that prevented him from "connecting  
14 the dots," or properly weighing the relative importance of the legal prohibition on the  
15 reimbursement of federal contributions. Thus, Dr. Mills claimed that at one level O'Donnell

<sup>7</sup> A definition of Bipolar Disorder from the National Institutes of Mental Health website is provided in the O'Donnell response brief. See O'Donnell Response at 5. According to Dr. Mark Mills, O'Donnell had not been diagnosed with Bipolar Disorder in 2003. Int. with Dr. Mark Mills, Dec. 19, 2006. Indeed, one of the mental health professionals submitting a report, Burt Crausman, Ph.D., treated Mr. O'Donnell for a considerable time from May 1995 until December 1997, and more recently from August 2004 to the present, without recognizing his patient's symptoms as being indicative of a Bipolar disorder, until such a diagnosis was made by another expert retained to examine Mr. O'Donnell after the Commission began investigating this matter. See O'Donnell Response at Attachment 4.

<sup>8</sup> Notwithstanding the alleged impact on his judgment in terms of deciding to reimburse the contributions to the Edwards Committee, several of the mental health professionals who evaluated O'Donnell claim the impairment was compartmentalized to his personal dealings and did not significantly impair O'Donnell's performance as a lawyer during the same time period because of assistance provided by his colleagues and staff. In their supplemental response brief, O'Donnell's counsel asserted that his Bipolar Disorder had some demonstrated effect on his legal practice in the area of client and colleague relations, but that does not impact our analysis. See O'Donnell Supplemental Response at 1-4.

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1 knew what the law was, but because of his illness he was unable to fully comprehend that the  
2 law applied to him. Int. with Dr. Mark Mills, Dec. 19, 2006. In sum, O'Donnell argues that his  
3 purported mental condition negates a finding that he acted knowingly and willfully. See  
4 O'Donnell Response at 13-16.

5 O'Donnell is arguing a diminished capacity defense, similar to that used to negate a  
6 "specific intent" requirement in criminal prosecutions. See, e.g., *United States v. Sayetality*, 107  
7 F.3d 1405, 1412 (9th Cir. 1997); *United States v. Echeverry*, 759 F.2d 1451, 1454 (9th Cir.  
8 1985). In such cases, a defendant must provide sufficient evidence that a mental condition raises  
9 reasonable doubt that the defendant had the capacity to actually form the level of intent required  
10 as an element of a particular criminal offense. See *U.S. v. Erskine*, 588 F.2d 721 (9th Cir. 1978).  
11 In a murder trial, for example, a successful diminished capacity defense might result in a  
12 reduction to the charge of manslaughter. We have found no cases in which diminished capacity  
13 has been used as a defense to a criminal violation of the FECA, or any analogous cases where  
14 diminished capacity has been used to negate the "knowing and willful" component of a violation  
15 in civil enforcement actions.<sup>9</sup> See 2 U.S.C. § 437g(d).

16 O'Donnell's recent claim of diminished capacity cannot overcome the strong evidence  
17 that he had knowledge of the law and took deliberate (rather than accidental or inadvertent)  
18 actions that violated the law. First, the purported condition was not diagnosed at or even shortly  
19 after the time of the violations. Indeed, O'Donnell's mental state was raised only after it became  
20 clear that the Commission would not conciliate without either a finding or an admission that

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<sup>9</sup> Significantly, Section 5K2.13 of the Federal Sentencing Guidelines recognizes "Diminished Capacity" not as a defense to liability for violation of the law, but as a general mitigating factor that might be a basis for justifying a downward departure in terms of sentencing. Such a departure is only available, however, if the diminished capacity is found to have "contributed substantially to the commission of the offense."

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1 O'Donnell knowingly and willfully violated the law. Second, the mental health professionals  
2 whose opinions have been proffered by O'Donnell were retained, in part, for purposes of  
3 defending O'Donnell's legal exposure before the Commission, and likely any subsequent  
4 criminal prosecution; none of their conclusions were reached contemporaneously with the  
5 actions that constitute violations of the law in this matter. See O'Donnell Response, Exhs. 1, 3-  
6 5. In fact, the earliest evaluation of Mr. O'Donnell that led to a diagnosis of Bipolar Disorder  
7 was in February of 2005, almost two years after the activities that led to this investigation. See  
8 O'Donnell Response Exh. 1. Third, it is undisputed that O'Donnell knew that it was illegal to  
9 reimburse the contributions. O'Donnell's subsequent actions were neither accidental nor  
10 inadvertent, but were a deliberate effort to circumvent the law and conceal what he fully  
11 understood to be violations of the law. Thus, even if O'Donnell's judgment was impaired by a  
12 medical condition, there is no basis on the record to conclude that such an impairment totally  
13 negated O'Donnell's capacity to act in a knowing and willful manner. Finally, O'Donnell's  
14 diminished capacity argument should receive even less weight given the fact that O'Donnell has  
15 offered no testimony regarding his mental impairment and how it purportedly related to his  
16 appreciation that he was acting in violation of the Act.

17 Our meeting with Dr. Mark Mills further confirms that O'Donnell knowingly violated the  
18 Act. For example, we asked Dr. Mills why O'Donnell chose one method of violating the law  
19 over another in trying to meet his commitment to the Edwards campaign. In other words, if his  
20 mental illness prevented him from appreciating that the law applied to his actions, why did he  
21 choose to disguise his actions rather than making a direct excessive contribution himself without  
22 the use of conduits? Dr. Mills acknowledged that O'Donnell "knew both were wrong" and  
23 conceded that O'Donnell chose the method least likely to be detected.

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1           Notwithstanding the concealment, which we view as evidence of O'Donnell's awareness  
2   that the law applied to him, Dr. Mills still opined that O'Donnell's mental state was not  
3   consistent with "flaunting the law." Int. of Dr. Mark Mills, Dec. 19, 2006. O'Donnell's defense  
4   appears to be that while his actions were knowing, his mental illness prevented them from being  
5   willful. However, O'Donnell took a series of deliberate and calculated steps "to disguise the  
6   source of the funds." *Hopkins*, 916 F.2d at 213-14. This was also the second time he had  
7   engaged in such a reimbursement scheme, the first being the Hahn contributions discussed in the  
8   General Counsel's Brief. See O'Donnell Brief at 8-9. Accordingly, O'Donnell's actions should  
9   be regarded as willful.

10           In sum, the medical opinions offered by Respondent's experts fail to rebut the substantial  
11   evidence that O'Donnell's actions were knowing and willful. Accordingly, we recommend that  
12   the Commission find probable cause to believe that Pierce O'Donnell knowingly and willfully  
13   violated 2 U.S.C. § 441f by making contributions in the names of another.

14           B.   O'Donnell & Mortimer LLP

15           The General Counsel's Brief sent to the Firm sets forth the arguments for holding the  
16   Firm vicariously liable for O'Donnell's knowing and willful violation of the FECA. See Firm  
17   Brief 10-17. The Firm, without disputing any of the facts relating to the reimbursement scheme,  
18   argues that O'Donnell's fundraising activities for the Edwards Committee were outside the scope  
19   of his employment and that all of the other partners were unaware of the illegal reimbursements.  
20   See Firm Response at 16-18. The Firm's Response includes an affidavit from the Firm's former

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1 managing partner, Ann Marie Mortimer, in which she swears to the fact that she was unaware of  
2 the reimbursements at the time they were made.<sup>10</sup> Firm Response Exh. A.

3 Notwithstanding the lack of awareness by other partners, the Firm can be held liable for  
4 O'Donnell's wrongful acts. As established in the General Counsel's Brief, O'Donnell appears to  
5 have been acting as an agent of the Firm in the ordinary course of business when he became  
6 involved in fundraising for Edwards and made the reimbursed contributions at issue. O'Donnell  
7 Brief at 14-15. Indeed, both the Edwards contributions and O'Donnell's prior fundraising for the  
8 Hahn mayoral campaign highlight how such activities are within the scope of his employment by  
9 the Firm. In both cases, O'Donnell openly used Firm resources, supplies, and personnel for  
10 political fundraising, and held the Firm out to the world as sponsoring a fundraising event.<sup>11</sup>

11 The Firm attempts to argue that it could be held liable for the acts of its partner only if the  
12 Firm was in the business of illegally reimbursing campaign contributions. Firm Response at 10-  
13 11. However, California caselaw reveals that the illegal act itself does not have to be within the  
14 scope of the partnership business for the partnership to be held liable for the wrongful act of one  
15 of its partners. See *Blackmon v. Hale*, 463 P.2d 418 (Cal. 1970). Rather, "the apparent scope of  
16 the partnership business depends primarily on the conduct of the partnership and its partners and  
17 what they cause third persons to believe about the authority of the partners." *Blackmon*, 463  
18 P.2d at 423. "Ostensible agency or acts within the scope of the partnership business are  
19 presumed 'where the business done by the supposed agent, so far as open to the observation of

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<sup>10</sup> In its response brief, the Firm represented that it is in the process of dissolution, with former named partner, John Shaeffer, having left the firm some time ago, and the remaining partner, Ann Marie Mortimer, along with most of the other attorneys, having recently moved to the Los Angeles office of another firm. Firm Brief at fn 1.

<sup>11</sup> Based upon representations made in its Supplemental Brief, it also appears that O'Donnell became involved in both the Hahn and Edwards fundraising activities through a professional association with another lawyer involved in cases being handled by the Firm. See Supplemental O'Donnell Response Brief at p. 5.

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1 third parties, is consistent with the existence of an agency, and where, as to the transaction in  
2 question, the third party was justified in believing that an agency existed." *Id.* (citing *County*  
3 *First Nat. Bank of Santa Cruz v. Coast Dairies & Land Co.*, 46 Cal. App. 2d 353, 366 (1941);  
4 *Kamen & Co. v. Paul H. Aschkar & Co.*, 382 F.2d 689, 695 (9th Cir. 1967). It appears,  
5 therefore, that O'Donnell's fundraising activities were done in the scope of his employment and  
6 to benefit the Firm, as shown above, and that is enough to hold the Firm vicariously liable for  
7 O'Donnell's illegal actions done in the course of his fundraising.

8       Although the Firm can be held vicariously liable for a knowing and willful violation of  
9 the law, we are recommending that the Commission make a probable cause finding for only a  
10 non-knowing and willful violation. While the lack of knowledge by other partners does not  
11 negate vicarious liability for a knowing and willful element, it is a mitigating factor. In addition,  
12 from a practical standpoint, their lack of knowledge will likely be a significant obstacle in  
13 persuading the Firm's other partners to agree to conciliate a knowing and willful violation  
14 attributable entirely to O'Donnell's actions. Finally, the fact that the Firm is being dissolved  
15 means that it will not have any future involvement in the political process. At this point, we do  
16 not believe it is worth expending the additional Commission resources that would be required to  
17 resolve the Firm's liability on a knowing and willful basis. Nonetheless, the Commission should  
18 pursue a violation by the Firm, exercising its prosecutorial discretion with regard to the knowing  
19 and willful element based on the totality of the circumstances. Therefore, we recommend that  
20 the Commission find probable cause to believe that O'Donnell & Mortimer LLP violated  
21 2 U.S.C. § 441f.

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**C. Dolores Valdez**

Although we recommend that the Commission find probable cause to believe that Ms. Valdez violated the Act, we believe it would be appropriate for the Commission to take no further action other than issue a letter of admonishment to Ms. Valdez.

As stated in the Valdez Response, this respondent is a legal immigrant with a high school education. Valdez Response at 1. Pierce O'Donnell hired her and had the authority to terminate her employment. *Id.* The response also contends, which comports with what we learned in the investigation, that Valdez was carrying out the requests of her employer in the course of her employment and did not perceive that she had a choice in the matter. Valdez Response at 6.

Although the O'Donnell medical reports indicate that Ms. Valdez expressed reservations about the scheme, there is no evidence that she knew the reimbursements were illegal, and indeed may have relied on O'Donnell's supposed expertise as a well-known lawyer and her boss.

Valdez has asserted her Fifth Amendment right not to testify; however, she has otherwise cooperated with the investigation by voluntarily providing relevant bank documents.

In sum, while Valdez may have more responsibility than other conduits, she was ultimately acting on the orders of her employer. Therefore, we recommend that the Commission find probable cause to believe that Dolores Valdez violated 2 U.S.C. § 441f, but take no further action other than admonishment and close the file.

**D. Other Conduits**

The Commission previously found reason to believe that a number of other individuals who were conduits in O'Donnell's reimbursement scheme violated the Act. Although the investigation confirmed that these individuals were reimbursed for their contributions to the

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1 Edwards Committee (*see* Attachment 1 – Chart of Reimbursements), we chose not to issue  
2 probable cause briefs as to their violations. Our decision was based on a combination of the  
3 conduits' limited role, their apparent reliance on O'Donnell's legal expertise, and the unequal  
4 bargaining power that O'Donnell had over the employees of the Firm. This decision is  
5 consistent with past Commission precedent in declining to proceed against mere conduits. *See*  
6 *e.g.* MUR 5366 (Tah Turner) and MUR 5398 (LifeCare).

7 Therefore, we recommend that the Commission take no further action other than  
8 admonishment and close the file with respect to the following individuals: Christina Andujo,  
9 Hilda Escobar, Jacqueline Folsom, Russell Folsom, Anita Latinovic, Else Latinovic, Mary  
10 O'Donnell, Meghan O'Donnell, Elizabeth Owen, Bert Rodriguez, Johnny Rodriguez, Rafael  
11 Velasco, Gerald Wahl, Helen Wahl, and Harry Silberman.

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**VL RECOMMENDATIONS**

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1. Find probable cause to believe that Pierce O'Donnell knowingly and willfully violated 2 U.S.C. § 441f;

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4. Find probable cause to believe that O'Donnell & Mortimer LLP f/k/a O'Donnell & Shaeffer LLP violated 2 U.S.C. § 441f;

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6. Find probable cause to believe that Dolores Valdez violated 2 U.S.C. § 441f;

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7. Take no further action other than admonishment and close the file with respect to Dolores Valdez;

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- 1 8. Take no further action other than admonishment and close the file with respect to the  
2 following conduit respondents: Christina Andujo, Hilda Escobar, Jacqueline Folsom,  
3 Russell Folsom, Anita Latinovic, Else Latinovic, Mary O'Donnell, Meghan  
4 O'Donnell, Elizabeth Owen, Bert Rodriguez, Johnny Rodriguez, Rafael Velasco,  
5 Gerald Wahl, Helen Wahl, and Harry Silberman, and;  
6  
7 9. Approve the appropriate letters.

8  
9  
10 2/13/02  
11 Date

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